

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 328 – SB 835

March 24, 2013

SUMMARY OF ORIGINAL BILL: Prohibits the Board for Licensing Contractors from granting or allowing any exception to any monetary limitations of licensed contractors. Prohibits contractors, mechanics, or materialmen who are not properly licensed from providing a lien for improvements on real property. Redefines “visible commencement of operations.” Amends the *Truth in Construction and Consumer Protection Act* by rendering the “pay-if-paid” clause unenforceable.

FISCAL IMPACT OF ORIGINAL BILL:

Other Fiscal Impact – The Board for Licensing Contractors will incur a one-time cost of \$1,500 to hold a rule-making hearing. This increase in expenditures will be covered by current fee revenue. As of June 30, 2012, the Board had a reserve account balance of \$2,688,206.

SUMMARY OF AMENDMENT (005176): Deletes all language after the enacting clause. Prohibits contractors, mechanics, or materialmen who are not properly licensed from providing a lien for improvements on real property. Renders void, in addition to the “pay-if-paid” clause, the “pay-when-paid” clause, unless the language contained in the contract, subcontract, purchase order, or agreement reflects the parties intention to shift the risk of owners’ nonperformance from the general contractor to the subcontractor with sufficient clarity to qualify as a condition precedent. States that the provisions of this bill, in addition to being applicable to liens filed for construction are also applicable to any contracts entered into or entered into on or after the effective date of July 1, 2013.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- According to the Department of Commerce and Insurance, the Board for Licensing Contractors will incur \$1,500 one-time expenditures for rule-making relating to transcript costs (\$1,000) and a court reporter (\$500). According to the Department, these expenditures can be handled within existing resources.

HB 328 – SB 835

- Pursuant to Tenn. Code Ann. §4-3-1011, all regulatory boards are required to be self-supporting over a two-year period. The Board had closing balances of \$493,784 in FY10-11, \$613,362 in FY11-12, and a closing reserve balance of \$2,688,206 on June 30, 2012.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" and last name "Geise" clearly distinguishable.

Lucian D. Geise, Executive Director

/jdb